



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Dependable Environmental Services, Inc.
PO Box 117
Windham, NH 03087-0117

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-029**

April 27, 2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division (the Division) to Dependable Environmental Services, Inc. pursuant to RSA 147-A and Env-C 600. The Division is proposing that fines totaling \$33,475 be imposed against Dependable Environmental Services, Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Dependable Environmental Services, Inc. ("Dependable") is a NH Corporation having a mailing address of PO Box 117, Windham, NH 03087-0117.

III. Summary of Facts and Law Supporting Claims

1. RSA 147-A authorizes the Department of Environmental Services (DES) to regulate the management, transportation, and disposal of hazardous waste in New Hampshire. RSA 147-A:3 authorizes the Commissioner of DES to adopt rules to implement hazardous waste management standards. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-Wm 100-1000 (Hazardous Waste Rules).
2. Pursuant to RSA 147-A:17-a, the Commissioner of DES is authorized to impose administrative fines of up to \$2,000 per violation for violations of RSA 147-A and rules adopted pursuant thereto. The Commissioner has adopted Env-C 612 to establish the schedule of fines for such violations.
3. Dependable's New Hampshire Annual Report (the Report) received by the Secretary of State on March 16, 1999, lists Gregory Bruett as the President, Treasure, and sole Director of Dependable. The Report is signed by Gregory Bruett giving his title as President.

4. 48 Lowell Road LLC is the record owner of land at 48 Lowell Road, Windham, NH, more particularly described in a deed recorded in the Rockingham County Registry of Deeds at Book 3239, Page 2922, identified on the Windham, NH Tax Maps as Map 20E, lot 252 (the Site).
5. Dependable first notified DES and the U.S. Environmental Protection Agency (EPA) of its activities as a New Hampshire-based hazardous waste transporter on September 22, 1988. EPA Identification Number NHD982747073 was assigned to Dependable's facility at 48 Lowell Road, Windham, NH.
6. Dependable filed a subsequent notification of hazardous waste activity with DES in 1992 indicating that it was acting as a hazardous waste generator and transporter.
7. Dependable filed its most recent hazardous waste activity notification with DES on November 19, 1993. In the notification, Dependable describes its generator status as a Non-RCRA or New Hampshire Regulated Only generator and its activities as a hazardous waste transporter, a marketer of specification and off-specification used oil fuel, and a generator of 50 gallons per month of waste oil sediment NH01. Gregory Bruett is listed as Dependable's legal company owner in this notification.
8. Dependable was first issued a hazardous waste transporter registration on May 4, 1982.
9. On May 18, 2000, Dependable was issued its current hazardous waste transporter registration.
10. On April 19, 2000, DES personnel conducted a hazardous waste transporter facility inspection (Inspection) at the Site. The purpose of the Inspection was to determine Dependable's compliance status relative to RSA 147-A and the Hazardous Waste Rules.
11. Env-Wm 807.04(a)(3) provides that used oil is classified as a hazardous waste and must be managed in accordance with the hazardous waste rules if it does not meet the standards for off-specification used oil specified in Env- Wm 807.03.
12. Env- Wm 807.04(c) states "used oil containing more than 1000 parts per million ("ppm") of total halogens shall be presumed by [DES] to be a hazardous waste on the basis that it has been mixed with halogenated hazardous waste listed in Env- Wm 400."
13. During the Inspection, DES personnel obtained a copy of the waste oil inventory log ("Log"), dated January 5, 2000, for the aboveground storage tanks ("Tanks") containing used oil at the Site. The Log included the following information regarding halogen content in the Tanks:

Tank 3: Tested Fail Halogen 1,200 ppm, 19,700 gallons
Tank 4: Tested Fail Halogen 1,900 ppm
Tank 12: Halogen 4,400 ppm, 8,400 gallons
Tank 17: Tested Fail 1,100 ppm, 4,213 gallons
14. DES personnel questioned Wayne St. Jean, Dependable employee, relative to the contents

of the Tanks that failed for halogens. Mr. St. Jean informed DES that Dependable screens most, but not all, used oil for halogens.

15. On April 20, 2000, Dependable faxed to DES an up-to-date copy of its Log, dated April 20, 2000, for the Tanks containing used oil at the Site. The Log included the following information regarding halogen content in the Tanks:

Tank 3: Halogen 1,200 ppm, 19,700 gallons

Tank 4: Halogen 1,900 ppm, 19,700 gallons

Tank 12: High halogen, 8,400 gallons

Tank 17: Halogen 1,100 ppm, 4,213 gallons

16. The contents of Tanks 3, 4, 12, and 17 are a hazardous waste as defined by Env- Wm 807.04(a)(3).

17. Based upon records provided by Dependable, Dependable has maintained four Tanks of hazardous waste at the Site since January 5, 2000.

18. DES has no record of receiving a request for or issuing a waiver or an extension to Dependable to the 90-day storage period specified in Env-Wm 507.02(a), previously codified as Env-Wm 507.02(a)(3).

19. DES has no record of receiving a standard permit application from Dependable to accept, store, treat, or dispose hazardous waste at the Site.

20. Env-Wm 603.09, previously codified as Env-Wm 352.01(a), which references 49 CFR Part 172 Subpart H, 10/1/98 edition, Training, requires hazardous waste transporters to maintain a personnel training program to ensure that vehicle operators can provide effective responses to emergencies.

21. Env-Wm 603.09, previously codified as Env-Wm 352.01(a), requires all transporters to meet the personnel training requirements of 49 CFR Part 172 Subpart H, 10/1/98 edition.

22. At the time of the Inspection, Dependable was unable to provide records regarding training received by all of its vehicle operators.

23. On April 20, 2000, Dependable faxed to DES a copy of its training program.

24. A review of Dependable's personnel training program revealed the following:

- a. Dependable failed to conduct reviews for its vehicle operators.
- b. Dependable's training program failed to ensure that vehicle operators received the necessary training to effectively respond to emergencies.
- c. Dependable did not have training records for 1998.

25. Env-Wm 507.03(a)(1) requires that all containers used for storage of hazardous waste be

clearly marked with the beginning accumulation date, the words hazardous waste , words that identify the contents of the container, and the EPA/state waste number.

26. During the Inspection, DES personnel observed that a drum of gas solids (solids contaminated with gasoline) generated by Dependable had a torn, illegible label.

27. During the Inspection, DES personnel inspected Dependable's Tanks. Tanks # 3,4, 12, and 17 were not marked with a beginning accumulation date, the words hazardous waste , words that identify the contents of the container, or the EPA/state waste number.

28. Env-Wm 807.06(b)(13)b, previously codified as Env-Wm 807.06(b)(9)b, requires bills of lading for shipping used oil to include the name and site address of the generator/shipper.

29. During the Inspection, DES personnel learned that bills of lading are routinely prepared by Dependable for the used oil generators for whom Dependable transports. Dependable is thus acting as an agent for the generator.

30. During the Inspection, DES personnel reviewed Dependable's bills of lading and found that the following bills of lading did not included the street address of the generator:

944980	944939	944916	944912
944904	944887	944886	944877
944874	944873	944861	944857
944841	944840	944843	944691
944791	944800	944751	944752
944759	944758	944768	944729
944149	944740	944709	944619
944626	644627	944665	944667
944631	944605	944138	944139
944142	944162	944193	944133
944156	944118	944119	945957
945958	944123	944080	944086
944081	944084	944044	944045
944037	944066	944067	944015

31. During the Inspection, DES personnel reviewed Dependable's bills of lading and found that bill of lading 944631 did not included the generator s name.

32. Env-Wm 807.06(b)(13)f, previously codified as Env-Wm 807.06(b)(9)f, requires bills of lading to include the following statement signed by the generator: This used oil is destined to be recycled and is subject to regulation by [DES] under Part Env- Wm 807. I certify that this used oil is not a hazardous waste fuel as defined in Env- Wm 807.04 and that I have not mixed this used oil with any other hazardous wastes identified in Chapter Env-Wm 400 or any used oil classified as a hazardous waste fuel under Env- Wm 807.04.

33. During the Inspection, DES personnel reviewed Dependable s bills of lading and found that bill of lading 944067 did not included the generator's signature as required by Env-Wm

807.06(b)(13)f, previously codified as Env-Wm 807.06(b)(9)f.

34. As the agent for the generator, Dependable is responsible for providing all bills of lading information required under Env-Wm 807.06(b)(13), previously codified as Env-Wm 807.06(b).

35. On August 10, 2000, DES issued Administrative Order No. WMD 00-21 (Order) to Dependable.

36. As of the date of this letter, Dependable has not submitted copies of analytical results requested by DES in E.6 of the Order.

37. As of the date of this letter, Dependable has not complied with E.7 of the Order, which ordered Dependable to dispose of all hazardous waste within 60 days of DES approval of the, disposal plan. The disposal plan was approved on October 24, 2000.

IV. Violations Alleged

1. Dependable has violated Env-Wm 807.04(a)(3) by failing to manage as hazardous waste used oil that has not met the standards for off-specification used oil.

2. Dependable has violated Env-Wm 603.09, previously codified as Env-Wm 352.01(a), by failing to implement a training program for vehicle operators which ensures vehicle operators can provide effective responses to emergencies.

3. Dependable has violated Env-Wm 603.09, previously codified as Env-Wm 352.01(a), by failing to ensure that training reviews are conducted for all vehicle operators.

4. Dependable has violated Env-Wm 603.09, previously codified as Env-Wm 352.01(a), by failing to ensure that all vehicle operators training records are complete.

5. Dependable has violated Env-Wm 507.03(1) by failing to clearly label containers of hazardous waste with the beginning accumulation date, the words hazardous waste , words identifying the contents, and the EPA or state waste number.

6. Dependable has violated Env-Wm 807.06(b)(13)b, previously codified as Env-Wm 807.06(b)(9)b, by failing to include the generator's name and site address on all bills of lading.

7. Dependable has violated Env-Wm 807.06(b)(13)f, previously codified as Env-Wm 807.06(b)(9)f, by failing to obtain the generator's signature on all bills of lading.

8. Dependable failed to comply with an administrative order issued pursuant to RSA 147-A:14.

9. As President, Treasurer, and sole Director of Dependable, Gregory Bruett is responsible for the violations noted herein.

V. Proposed Administrative Fines

1. For the violation identified in IV.1. above, a fine in the amount of \$1,500 has been calculated pursuant to Env-C 610.
2. For the violation identified in IV.2, above, Env-C 612.02 (a) specifies a fine of \$2,000 per driver not trained. For Dependable s one driver, the Division is seeking a fine of \$2,000.
3. For the violation identified in IV.3, above, Env-C 612.02(b) specifies a fine of \$500 per individual whose training is not updated. For Dependable s one driver, the Division is seeking a fine of \$500.
4. For the violation identified in IV.4. above, a fine in the amount of \$925 has been calculated pursuant to Env-C 610.
5. For the violation identified in IV.5, above, Env-C 612.06(1) specifies a fine of \$600 for each container that is 55-gallons or greater and \$300 for each container that is less than 55-gallons. For the four containers that are 55-gallons or greater and 1 container that is less than 55-gallons, the Division is seeking a total fine of \$2,700.
6. For the violation identified in IV.6. above, a fine in the amount of \$925 has been calculated pursuant to Env-C 610.
7. For the violation identified in IV.7. above, a fine in the amount of \$925 has been calculated pursuant to Env-C 610.
8. For the violation of IV.8. above, Env-C 612.03(f)(2) specifies a fine of \$2,000 per calendar month or portion thereof that compliance is not achieved after in specified in the order for each provision of the order that is not complied with. Dependable has not complied with E.6 of the Order for 8 months, and has not complied with E.7 of the order for four months. For these violations the Division is seeking a fine of \$24,000.

The total fine being sought is \$ 33,475.

VI. Hearing, Required Response

You have the right to a hearing to contest the Division s allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, June 25, 2001 at 10:30 a.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than May 25, 2001**, using the enclosed colored form as follows:

1. If Dependable plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.
2. If Dependable chooses to waive the hearing and pay the proposed fine, please have the

authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If Dependable wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Dependable's interest in settling.

Dependable is not required to be represented by an attorney. If Dependable chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Dependable wishes to have a hearing but is unable to attend as scheduled, Dependable must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If Dependable fails to notify Mr. Ballentine in advance and does not have a representative attend the hearing, the hearing will be conducted in Dependable's absence in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Dependable committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Dependable committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Dependable proves, by a preponderance of the evidence,** applies in this case:
 1. The violation was a one-time or non-continuing violation, **and** Dependable did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Dependable did not benefit financially, whether directly or indirectly, from the violation.
 2. At the time the violation was committed, Dependable was making a good faith effort to comply with the requirement that was violated.
 3. Dependable has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
 4. Other information exists which is favorable to Dependable's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that **Dependable** committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Dependable's opportunity to present testimony and evidence that Dependable did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If **Dependable** has any evidence, such as photographs, business records or other documents, that believes show that Dependable did not commit the violation(s) or that otherwise support Dependable's position, Dependable should bring the evidence to the hearing. Dependable may also bring witnesses (other people) to the hearing to testify on Dependable's behalf.

If Dependable wishes to have an informal meeting to discuss the issues, Dependable must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Dependable has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

COPY
Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2000)

cc: DB File
Gretchen Rule, Enforcement Coordinator, DES
Public Information Coordinator, DES
Board of Selectmen, Windham, NH

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APPEARANCE

____ On behalf of Dependable I will attend the hearing scheduled for **Monday, June 25, 2001 at 10:30 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Signature

Date

Name (please print or type): _____

Title: _____

WAIVER OF HEARING

____ I certify that on behalf of Dependable I understand my right to a hearing regarding the imposition of the proposed administrative fine and that as an authorized representative of Dependable, I hereby waive those rights. The fine payment in the amount of \$33,475 paid to Treasurer, State of New Hampshire is enclosed.*

** If any portion of the payment is made by a check, draft, or money order which is returned or dishonored due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Signature

Date

Name (please print or type): _____

Title: _____

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095